IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.

A.O. No. 132 of 2003.
(Under section 173 of the Motor Vehicles Act)

(District : Nainital)

The New India Assurance Company Limited,
Through its Divisional Manager,
Opposite Judge Court, Haldwani,
District Nainital.

……Appellant,
Versus

1. Smt. Lachima Devi,
   w/o Late Balwanit Siungh Shahi,
   R/o Sanjayu Nagar, No. 1 Bindukhatta,
   P.O. Lalkuwan, Distt. Nainital,
   ……..Claimant/Respondent,
2. Sri Ramesh Singh,
   S/o Sri Umed Singh,
   R/o Baltak, P.O. Champawat,
   District Champawat,
   (owner of truck No.UP-29/962)
   ……Insured/Respondent.

For the Appellant: Mr. Tanveer Alam Khan, Advocate,
None for therespondents.

August 25, 2004.

Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

The present appeal has been filed against award of compensation dated 31.3.2003, made by the Motor accident Claims Tribunal/District Judge, Nainital in M.A.C. No. 12 of 2001.

Briefly stated, the facts are that Sri Balwant Singh, aged about 55 years, earning about Rs.8600/- as salary per month,on 18.7.2000 while traveling by truck No.U.P.-29/962 from Tanakpur to Taliabanj, District Champawat, where he was serving as a teacher in the Intermediate College, died due to the vehicle falling into a gorge and this accident was caused by rash and negligent driving by its

driver. After necessary formalities, petition for compensation was filed before the learned Tribunal. The owner of the vehicle took the defence that due to rains the wet soil sank with the passage of the truck and the driver was not at fault. The insurer/appellant in its written statement stated that the liability of owner does not shift to the insurer until he has proved all the documents of the vehicle and driving license, alongwith the age, income etc. of the deceased, and that the conditions of policy of insurance have not been complied with by the owner of the vehicle. The learned Tribunal framed as many as 4 issues on the point of rash and negligent driving, driver having valid driving license, whether the vehicle was insured and being plied according to its terms and considering the oral and documentary evidence of the parties, concluded that the accident occurred due to rash and negligent driving. The learned lower court also held that the insurer has failed to prove that the driver did not hold a valid driving license or the vehicle was being plied against the conditions of insurance policy. After one-third deduction for personal expenses of the deceased, the learned Tribunal applying the multiplier of 8 on the yearly dependency of Rs.60,000/- and further awarding Rs. 13,000/- as general damages, awarded Rs.4,93,000/- in all to the claimant.

In this appeal before us, it has been stated in the memo of appeal and urged on behalf of the appellant that the driving license did not bear the endorsement for hill driving and that the deceased was a gratuitous passenger in the truck and the insurance company was not liable to indemnify the insured.

We have heard the learned counsel for appellant and perused the impugned judgment and documents on record. It has been held by this Court time and again that be it true that the driver of the vehicle was not holding a driving license with endorsement for hill driving or lacking in any other detail, it does not absolve the insurance company from its liability to pay compensation to the dependents of the deceased which are the ultimate sufferers and need quick remedy

of compensation and the insurer, if it so desires, can take recourse to recover the compensation amount from the insured. We are guided in this respect by the verdict of Apex Court in National Insurance Company Ltd. Vs. Swaran Singh and others, 2004(3) S.C.C. 297 to direct the appellant that the appellant insurance company must first satisfy the award before the learned Tribunal and then only it can file its objections, if it so desires, before the executing court for redressal of its grievances about the dispute between the insurer and the insured in accordance with the provisions under sub-section (4) and (5) of section 149 M.V. Act. Besides this, the learned lower court has recorded under the relevant issue that the insurance company did not lead any evidence to support its plea nor such a specific plea was raised in its written statement. However, the aforesaid remedy is available to the appellant.

Similarly, we find from the copy of written statement of the appellant on record that no specific plea of gratuitous passenger has been taken by the appellant and probably, therefore, no issue has been framed or finding recorded by the learned lower court. Since this plea has been raised before us, we may refer to the case of National Insurance Company Ltd. Vs. Baljit Kaur and others (2004) 2 S.C.C. 1 in which having regard to the scope and purport of S. 168 of the Motor Vehicles Act, 1988, the Apex Court has held that the disputed between the insurer on the one hand and the owner or driver of the vehicle involved in the accident can be resolved by the Tribunal in the proceeding initiated before the executing court without filing a separate suit, after satisfying the award.

In view of the above discussion, we direct that the insurance company/appellant shall first satisfy the award before the learned Tribunal and then initiate proceeding before the executing court for redressal of its grievances which shall be decided by the Tribunal concerned. The present appeal is disposed of accordingly.

The amount of compensation, if deposited here, shall be remitted to the Tribunal concerned for disbursement.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh/25.8.04